

National Transportation Safety Board

§ 826.37

unless they are superseded by or are inconsistent with a provision of this part.

[59 FR 30532, June 14, 1994]

§ 826.32 Answer to application.

(a) Within 30 days after service of an application, counsel representing the agency against which an award is sought may file an answer to the application. Unless agency counsel requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of this section, failure to file an answer within the 30-day period may be treated as a consent to the award requested.

(b) If agency counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the administrative law judge upon request by agency counsel and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of agency counsel's position. If the answer is based on any alleged facts not already in the record of the proceeding, agency counsel shall include with the answer either supporting affidavits or a request for further proceedings under § 826.36.

§ 826.33 Reply.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 826.36.

§ 826.34 Comments by other parties.

Any party to a proceeding other than the applicant and agency counsel may file comments on an application within 30 days after it is served or on an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the administrative law

judge determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

§ 826.35 Settlement.

The applicant and agency counsel may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded. If a prevailing party and agency counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 826.36 Further proceedings.

(a) Ordinarily the determination of an award will be made on the basis of the written record; however, on request of either the applicant or agency counsel, or on his or her own initiative, the administrative law judge assigned to the matter may order further proceedings, such as an informal conference, oral argument, additional written submissions, or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application and shall be conducted as promptly as possible.

(b) A request that the administrative law judge order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

§ 826.37 Decision.

The administrative law judge shall issue an initial decision on the application within 60 days after completion of proceedings on the application. The decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the agency's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether

§ 826.38

special circumstances make an award unjust.

§ 826.38 Board review.

Either the applicant or agency counsel may seek review of the initial decision on the fee application, or the Board may decide to review the decision on its own initiative, in accordance with subpart H of part 821 for FAA safety enforcement matters appealed under section 609 of the Federal Aviation Act. If neither the applicant nor agency counsel seeks review and the Board does not take review on its own initiative, the initial decision on the application shall become a final decision of the Board 30 days after it is issued. Whether to review a decision is a matter within the discretion of the Board. If review is taken, the Board will issue a final decision on the application or remand the application to the administrative law judge who issued the initial fee award determination for further proceedings.

§ 826.39 Judicial review.

Judicial review of final Board decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

§ 826.40 Payment of award.

An applicant seeking payment of an award shall submit to the disbursing official of the FAA a copy of the Board's final decision granting the award, accompanied by a statement that the applicant will not seek review of the decision in the United States courts. Applications for award grants in cases involving the FAA shall be sent to: The Office of Accounting and Audit, AAA-1, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. The agency will pay the amount awarded to the applicant within 60 days, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

49 CFR Ch. VIII (10-1-07 Edition)

PART 830—NOTIFICATION AND REPORTING OF AIRCRAFT ACCIDENTS OR INCIDENTS AND OVERDUE AIRCRAFT, AND PRESERVATION OF AIRCRAFT WRECKAGE, MAIL, CARGO, AND RECORDS

Subpart A—General

Sec.

830.1 Applicability.

830.2 Definitions.

Subpart B—Initial Notification of Aircraft Accidents, Incidents, and Overdue Aircraft

830.5 Immediate notification.

830.6 Information to be given in notification.

Subpart C—Preservation of Aircraft Wreckage, Mail, Cargo, and Records

830.10 Preservation of aircraft wreckage, mail, cargo, and records.

Subpart D—Reporting of Aircraft Accidents, Incidents, and Overdue Aircraft

830.15 Reports and statements to be filed.

AUTHORITY: Federal Aviation Act of 1958, as amended (49 U.S.C. 40101 *et seq.*), and the Independent Safety Board Act of 1974, as amended (49 U.S.C. 1101 *et seq.*).

SOURCE: 53 FR 36982, Sept. 23, 1988, unless otherwise noted.

Subpart A—General

§ 830.1 Applicability.

This part contains rules pertaining to:

(a) Initial notification and later reporting of aircraft incidents and accidents and certain other occurrences in the operation of aircraft, wherever they occur, when they involve civil aircraft of the United States; when they involve certain public aircraft, as specified in this part, wherever they occur; and when they involve foreign civil aircraft where the events occur in the United States, its territories, or its possessions.

(b) Preservation of aircraft wreckage, mail, cargo, and records involving all civil and certain public aircraft accidents, as specified in this part, in the